

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE NEW ENGLAND COMPOUNDING)
PHARMACY, INC. PRODUCTS LIABILITY)
LITIGATION)
_____)

MDL No. 2419
Dkt. No 1:13-md-2419 (RWZ)

THIS DOCUMENT RELATES TO:)

All Cases)
_____)

**NOTICE OF POSTPONEMENT OF DEPOSITIONS OF
MARIO GIAMEI, JOHN NOTARIANNI, AND MEDICAL SALES MANAGEMENT**

Defendants Saint Thomas Outpatient Neurosurgical Center, LLC; Howell Allen Clinic, A Professional Corporation; John Culclasure, MD; Debra Schamberg, RN, CNOR; Vaughan Allen, MD; Specialty Surgery Center, PLLC; Kenneth R. Lister, MD; and Kenneth Lister, MD, PC (collectively "Tennessee Clinic Defendants") hereby give notice to the Court and to all parties of the following:

1. The Tennessee Clinic Defendants, pursuant to the deposition protocol, served a notice and subpoena on April 10, 2015, for the deposition of Mario Giamei, scheduled for **June 10, 2015**.¹

¹ Dkt. 1773.

2. On April 17, 2015, the Tennessee Clinic Defendants served a notice for the 30(b)(6) deposition of Medical Sales Management, Inc. (hereinafter “MSM”) and a notice and subpoena for the deposition of John Notarianni, both scheduled for **June 9, 2015**.²

3. MSM filed a joinder in the Insider Defendants’ Motion for Protective Order, requesting that the Court prohibit the Tennessee Clinic Defendants from taking the deposition of MSM.³ This motion was argued on May 28, 2015, before Magistrate Judge Boal, and taken under advisement. It is presently pending before the Court.

4. Accordingly, the Tennessee Clinic Defendants hereby serve notice of the postponement of the MSM 30(b)(6) deposition pending the Court’s ruling on the Insider Defendants’ Motion for Protective Order and MSM’s joinder in that motion, which should address the scope and extent of any permitted oral discovery of MSM.⁴

5. Relatedly, counsel for the Tennessee Clinic Defendants has conferred with counsel for Mr. Giamei and Mr. Notarianni via telephone and email. Based on these conversations, counsel for the Tennessee Clinic Defendants understands that both Mr. Giamei and Mr. Notarianni will invoke their Fifth Amendment right against self-incrimination in response to deposition questions. In other words, Mr. Giamei and Mr. Notarianni are expected, at least at this point, to take the same position as the Insider Defendants.^{5 6}

² Dkt. 1782.

³ Dkt. 1854.

⁴ Dkt. 1854.

⁵ Dkt. 1823.

⁶ One distinction being that neither Mr. Giamei nor Mr. Notarianni has been indicted.

6. In the interest of judicial economy, rather than require Mr. Giamei and Mr. Notarianni to file their own motions for protective orders echoing the same arguments pending before the Court, counsel for the Tennessee Clinic Defendants and counsel for Mr. Giamei and Mr. Notarianni have agreed to postpone the depositions pending the Court's ruling on the Insider Defendants' Motion for Protective Order. The Court's ruling should provide guidance on the scope and extent of oral discovery of Mr. Giamei and Mr. Notarianni. Accordingly, the Tennessee Clinic Defendants hereby give notice of the postponement of the depositions of Mr. Giamei and Mr. Notarianni pending resolution of the pending motions for protective order.

7. These depositions will be rescheduled as soon as practicable following resolution of the pending motions for protective order, should the Court allow such discovery. The postponement of the depositions does not indicate any belief by the Tennessee Clinic Defendants that these depositions are not necessary for their defense of the cases, but simply reflects the procedural circumstance that motions pending before the Court may directly or indirectly affect the conduct of these three depositions.

Respectfully submitted,

GIDEON, COOPER & ESSARY, PLC

/s/ Chris J. Tardio

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* Admitted pursuant to MDL Order No. 1.

** Admitted *pro hac vice*.

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the CM/ECF system will be served electronically to the registered participants identified on the Notice of Electronic Filing and copies will be e-mailed or mailed via regular U.S. mail to those participants identified as unregistered this 5th day of June, 2015.

/s/ Chris J. Tardio

Chris J. Tardio